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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 CHASOM BROWN, WILLIAM BYATT,
20 JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
21 individually and on behalf of all similarly
situated,

Case No. 5:20-cv-03664-LHK-SVK

**ADMINISTRATIVE MOTION TO SEAL
JOINT DISCOVERY STATEMENT
PURSUANT TO DKT. 133, 133-1**

Referral: Hon. Susan van Keulen, USMJ

22 Plaintiffs,

23 v.

24 GOOGLE LLC,
25 Defendant.

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully
 3 seeks to seal certain portions of the parties’ Joint Discovery Statement submitted pursuant to the
 4 Court’s April 13 Discovery Order, Dkt. 133, 133-1 (“Joint Discovery Statement”), which contains
 5 non-public, sensitive confidential and proprietary business information that could affect Google’s
 6 competitive standing and may expose Google to increased security risks if publicly disclosed and
 7 information that contains, summarizes, or reflects material designated “Confidential or “Highly
 8 Confidential – Attorneys’ Eyes Only” by Plaintiffs. This Administrative Motion pertains for the
 9 following information contained in the Joint Discovery Statement:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Discovery Statement, Joint Statement Regarding Class Member Identification (Chart A # P6)	Portions Highlighted in Yellow at 4:11-15, 4:17, 4:18-19, 4:27, 5:10, 5:14	Google
Joint Discovery Statement, Chart B	Portions Highlighted in Yellow at pages 13 (P6, Plaintiffs RFP 10), 15-16 (P9, Plaintiffs RFP 86), 16-17 (P9, Plaintiffs RFP 87), 18 (P9, Plaintiffs RFP 92), 20 (P9, Plaintiffs RFP 128), 21-22 (P9, Plaintiffs RFP 129), 23 (P9, Plaintiffs RFP 130)	Google
Joint Discovery Statement, Chart C	Portions Highlighted in Blue at pages 30-32 (Interrogatory No. 2), 36-37 (Interrogatory No. 5)	Plaintiffs

20 **II. LEGAL STANDARD**

21 A party seeking to seal material must “establish[] that the document, or portions thereof, are
 22 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is
 23 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
 24 only of sealable material.” *Id.*

25 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
 26 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of*
Honolulu, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a
 27 non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower
 28

standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under “good cause” standard) (Van Keulen, J.).

A discovery letter brief is non-dispositive, and thus the good cause standard applies. *See e.g. Pietsch v. Wells Fargo Bank, N.A.*, 2018 WL 10362631, at *2 (N.D. Cal. Nov. 8, 2018) (“The parties have filed two separate motions to seal portions of the discovery letter briefs that are pending before the Court. Because the sealing requests were made in conjunction with a non-dispositive discovery motion, a showing under the good cause standard will suffice.”). Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard.

III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”

1 standard. *See e.g. Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 3 standard where that information could be used to the company’s competitive disadvantage”) (citation
 4 omitted). Courts in this district have also determined that motions to seal may be granted as to
 5 potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 6 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 7 shown that the substance of the information . . . amounts to a trade secret”).

8 Here the Joint Discovery Statement comprises confidential and proprietary information
 9 regarding highly sensitive features of Google’s internal systems and operations that Google does not
 10 share publicly. Specifically, this information provides details related to the various types of
 11 unauthenticated identifiers/cookies Google uses internally and their proprietary functions. Such
 12 information reveals Google’s internal strategies, system designs, and business practices for operating
 13 and maintaining many of its important services while complying with its legal and privacy obligations.

14 Public disclosure of the above-listed information would harm Google’s competitive standing it
 15 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 16 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 17 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 18 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive
 19 business information related to Google’s processes and policies to ensure the integrity and security of
 20 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
 21 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
 22 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.
 23 Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
 24 as to “internal research results that disclose statistical coding that is not publically available”).

25 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 26 compromise Google’s internal identifier systems. Google would be placed at an increased risk of
 27 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
 28 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system affects

1 how messages are transmitted” because if made public, it “could lead to a breach in the security of the
 2 Gmail system”). The security threat is an additional reason for this Court to seal the identified
 3 information.

4 Further, the Joint Discovery Statement comprises information that contains, summarizes, or
 5 reflects material designated “Confidential or “Highly Confidential – Attorneys’ Eyes Only” by
 6 Plaintiffs. Trebicka Decl. ¶ 7. Pursuant to Civil Local Rule 79-5(e), Plaintiffs, as the Designating
 7 Party, bears the responsibility to establish that their designated material is sealable.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court should seal the identified portions of the Joint Letter
 10 Brief.

11 DATED: April 23, 2021

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